

United States Department of Agriculture,

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

NOTICE OF JUDGMENT NOS. 83-90, FOOD AND DRUGS ACT.

- 83. Misbranding of wine (Fermented solution of commercial dextrose, artificially colored and preserved with benzoic acid).
- 84. Misbranding of baked beans and tomato sauce (Underweight).
- 85. Misbranding of canned tomatoes (Underweight).
- 86. Misbranding of a drug product (Saltpetre).
- 87. Misbranding of evaporated apples (As to quality).
- 88. Adulteration of milk (Added water).
- 89. Misbranding of evaporated apples (Underweight).
- 90. Misbranding of canned peas (Underweight).

(N. J. 83.)

MISBRANDING OF WINE.

(FERMENTED SOLUTION OF COMMERCIAL DEXTROSE ARTIFICIALLY COLORED AND PRESERVED WITH BENZOIC ACID.)

In accordance with the provisions of section 4 of the Food and Drugs Act of June 30, 1906, and of regulation 6 of the rules and regulations for the enforcement of the act, notice is given of the judgment of the court in the cases of the United States *v.* 1078 barrels of wine and United States *v.* 220 barrels of wine, proceedings of libel for seizure and condemnation of said wine under the provisions of section 10 of the aforesaid act lately pending in the district court of the United States for the eastern district of Louisiana, wherein John G. Dorn, The Sweet Valley Wine Company, and The A. Schmidt, jr., and Bros. Wine Company, all of Sandusky, Ohio, were claimants.

Libels for seizure and condemnation of the aforesaid barrels of wine, on the ground that they were adulterated and misbranded within the meaning of the aforesaid act, were filed by the United States attorney for the eastern district of Louisiana on February 5 and 7, 1908, respectively. The wine was duly seized by the marshal and on March 26, 1908, the said several claimants filed their answer, in substance and form identical, admitting the shipments of the

wine from Sandusky, Ohio, to New Orleans, La., denying that it was adulterated or misbranded, and in paragraph 4 thereof alleging that the act was unconstitutional, or, if not, that it was void for indefiniteness and uncertainty in that the offenses thereby intended to be created were not specifically defined.

On April 20, 1908, on the motion of the United States attorney, concurred in by counsel for claimants, the court ordered the two cases consolidated. On the same day the parties agreed to a statement of the facts and entered into a stipulation for judgment, wherein the several labels on the barrels and the composition of the wine are set out, all in substance and in form as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF
LOUISIANA, AT NEW ORLEANS.

AGREED STATEMENT OF FACTS AND STIPULATION FOR JUDGMENT.

Filed April 20, 1908.

UNITED STATES	}	No. 14057.
v.		
ONE THOUSAND SEVENTY-EIGHT BARRELS OF WINE.		

UNITED STATES	}	No. 14058.
v.		
TWO HUNDRED TWENTY BARRELS OF WINE.		

The above-entitled causes are consolidated by consent and for the purpose of these causes only it is agreed by and between Rufus E. Foster, United States attorney, and Bernard McCloskey and W. M. Hough, attorneys for The A. Schmidt, jr., & Bros. Wine Company, The Sweet Valley Wine Company, and John G. Dorn, claimants of the several portions of the barrels of wine proceeded against in the above-entitled suits, as shown by their respective claims and answers filed in said suits, that the contents of the barrels is a wine made from grape pomace, which has not been pressed dry, to which is added grape sugar, harmless coloring matter, in some instances a small amount of saccharin, and not more than one-tenth of 1 per cent of benzoate of soda, as indicated in the description herein; that the barrels are labeled as follows:

1. Those shipped by The A. Schmidt, jr., & Bros. Wine Company:

a. "Claret Wine—containing harmless coloring and one-tenth of 1 per cent benzoate of soda."

b. "Vino Type Claret Wine—containing harmless coloring and one-tenth of 1 per cent benzoate of soda."

c. "Vino Puro—Nagharea—A. Cusamano, New Orleans, La., containing harmless coloring and one-tenth of 1 per cent benzoate of soda."

d. "Vino Corvo Claret—A. Cusamano & Co., New Orleans, La., containing harmless coloring and one-tenth of 1 per cent benzoate of soda."

2. Those shipped by The Sweet Valley Wine Company:

a. "X Ohio Sweet Catawba Wine—Serial 124. Guaranteed under the National Pure Food and Drugs Act. Containing one-sixteenth of 1 per cent benzoate of soda, sweetened with cane sugar and pure saccharin, made 1906–1907."

b. "X—Port Wine Type—Serial 124. Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and one-sixteenth of 1 per cent benzoate of soda. Sweetened with cane sugar and pure saccharin. Made 1906–1907."

c. "A—Ohio Red Wine Vino Type—Serial 124. Guaranteed under the National Pure Food and Drugs Act. Containing one-sixteenth of 1 per cent benzoate of soda. Made 1906–1907."

d. "Ohio Claret Medoc Type Wine—Serial 124. Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and one-sixteenth of 1 per cent benzoate of soda."

3. Those shipped by John G. Dorn:

a. "Claret Wine—Serial No. 3255. Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and one-tenth of 1 per cent benzoate of soda."

b. "Vino Type—Serial No. 3255. Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and one-tenth of 1 per cent benzoate of soda."

c. "Vino Type—Serial No. 3255. Guaranteed under the National Pure Food and Drugs Act. Containing one-tenth of 1 per cent benzoate of soda."

That all of said wine was shipped by the respective claimants from Sandusky, Ohio, to the respective consignees at New Orleans, La., and still remains in the original packages; that the respective claimants are the true and lawful owners of the wine shipped by each respectively, as shown by their respective answers and claims filed herein; that the claimants withdraw their defense set up in the fourth paragraph of their respective claims and answers; that a decree of condemnation may be entered by consent, and that upon the payment of costs and the execution of a bond in the sum of one thousand dollars each by each of the claimants herein, conditioned as provided by sec. 10 of the Food and Drugs Act of June 30, 1906, the property seized herein may be returned to the respective claimants.

(Signed) RUFUS E. FOSTER,
U. S. Atty.
(Signed) BERNARD McCLOSKEY,
WARWICK M. HOUGH,
Attorneys for Claimants.

Thereafter, and on the same day, the court adjudged the wine misbranded and rendered its decree in form and substance as follows:

UNITED STATES OF AMERICA, DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

UNITED STATES	}	No. 14057
v.		
ONE THOUSAND SEVENTY-EIGHT BARRELS OF WINE.		

UNITED STATES	}	No. 14058.
v.		
TWO HUNDRED TWENTY BARRELS OF WINE.		

Now comes the United States of America, by Rufus E. Foster, United States attorney for the eastern district of Louisiana, and the claimants, John G. Dorn, The Sweet Valley Wine Co., and The A. Schmidt, jr., & Bros. Wine Co., by their attorneys, McCloskey & Benedict and Warwick M. Hough, claimants and owners of the wine seized by the United States marshal pursuant to the informations filed in causes Nos. 14057 and 14058, consolidated by consent, and upon stipulation filed in open court:

It is ordered, adjudged, and decreed that the wine aforesaid be, and the same is, condemned as misbranded, but upon the payment of the costs of these proceedings by the claimants and the giving of a bond in the sum of one thousand dollars each by

them the said John G. Dorn, The Sweet Valley Wine Co., and The A. Schmidt, jr., & Bros. Wine Co., conditioned that the said wine will not be disposed of by them contrary to the provisions of the Food and Drugs Act, approved June 30, 1906.

It is further ordered that the said wine be delivered to the respective claimants according to their respective claims and answers herein.

Decree entered April 20, 1908.

Decree engrossed April 21, 1908.

(Signed) EUGENE D. SAUNDERS, *Judge*.

The facts in the cases were as follows:

On or about February 4, 1908, an inspector of the United States Department of Agriculture found in the freight depot of the Illinois Central Railroad in New Orleans, La., 1,298 barrels of so-called wine, labeled and branded as hereinbefore stated in the agreed statement of facts upon which the cases were heard. The goods had been shipped from Sandusky, Ohio, during the months of December, 1907, and January, 1908. Five hundred and thirty-five barrels had been shipped by John G. Dorn to the following-named person and firms of New Orleans in the amounts stated: T. F. Cunningham, 345; Schmidt & Zeigler (Limited), 130; and Loeb, Lion & Felix (Limited), 60. Six hundred and one barrels had been shipped by A. Schmidt, jr., Bros. Wine Company to the following-named persons and firms of New Orleans, in the amounts stated: A. E. Murphy, 240; A. Mackie Grocery Company (Limited), 60; Joseph Congelosi & Co., 181; and Frank Vatter, 120. One hundred and sixty-two barrels had been shipped by The Sweet Valley Wine Company to the following-named firms of New Orleans, in the amounts stated: Meanard Brothers, 62; P. A. Best Company, 60; Block Brothers, 15; and Beret Brothers, 25.

Samples of each of the several brands included in the aforesaid shipments were analyzed in the Bureau of Chemistry of the said Department and it was found that:

The wines designated as "Claret Wine," and "Vino Type Claret Wine," and "Vino Puro-Nagherea," and "Vino Corno Claret," and "Vino Type" consisted of a fermented solution of commercial dextrose artificially colored with a dye, preserved with benzoic acid.

The wine designated as "X Ohio Sweet Catawba Wine" consisted of a fermented solution of commercial dextrose and sucrose, artificially sweetened with saccharin, preserved with benzoic acid.

The wine designated as "X Port Wine Type" consisted of a fermented solution of commercial dextrose and cane sugar, artificially colored with a coal-tar dye, sweetened with saccharin. There was present only 10.36 per cent of alcohol, a quantity much below that in true port wine.

The wine designated as "A Ohio Red Wine Vino Type" consisted of a fermented solution of commercial dextrose or starch sugar, artificially colored with a coal-tar dye and preserved with benzoic acid.

The wine designated as "A Ohio Claret Medoc Type Wine" consisted of a fermented solution of commercial dextrose, artificially colored with a coal-tar dye, preserved with benzoic acid.

In the opinion of the Department of Agriculture, wine is the product made by the normal alcoholic fermentation of the juice of sound ripe grapes, and the usual cellar treatment, and contains not less than seven (7) nor more than sixteen (16) per cent of alcohol, by volume, and in one hundred (100) cubic centimeters (20° C.), not more than one-tenth (0.1) gram of sodium chlorid nor more than two-tenths (0.2) gram of potassium sulphate, and red wine is wine containing the red coloring matter of the skins of grapes.

The analyses of the foregoing products disclosed that they were not made from the juice of grapes and were artificially colored to imitate true wines, and, in the opinion of the Secretary of Agriculture, were not entitled to be branded "wine," and were therefore adulterated and misbranded within the meaning of sections 7 and 8 of the Food and Drugs Act of June 30, 1906.

Accordingly, on February 5, 1908, the Secretary of Agriculture reported the facts to the United States attorney for the eastern district of Louisiana, who forthwith filed libels for seizure and condemnation of the aforesaid 1,298 barrels of wine, with the result hereinbefore stated.

H. W. WILEY,
F. L. DUNLAP,
GEO. P. McCABE,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 28, 1909.*

(N. J. 84.)

MISBRANDING OF BAKED BEANS AND TOMATO SAUCE.

(UNDERWEIGHT.)

In accordance with the provisions of section 4 of the Food and Drugs Act of June 30, 1906, and of regulation 6 of the rules and regulations for the enforcement of the act, notice is given that on the 13th day of March, 1909, in the district court of the United States for the district of Indiana, in a proceeding of libel under section 10 of the aforesaid act for seizure and condemnation of a misbranded